

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 9, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)
Rep. James Whitaker (R)

Members Excused: Rep. Nancy Fritz (D)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB74, SB421, SB48, 3/5/2001
Executive Action:

HEARING ON SB74

Sponsor: SEN. WALT McNUTT, SD50, SIDNEY

Proponents: Tom Zimmer, Tri-County Truck and Equipment, Billings
John Eyne, Pioneer Equipment, Butte
Duane Burkenpas, John Deere Dealer, Gallatin
Derrick Torgenson, equipment dealer
Russ Ritter, Modern Machinery, Missoula
Brad Griffin, Montana Equipment Dealers Assn.
Steve Turkowicz, Montana Auto Dealers Assn.

Opponents: Riley Johnson, Equipment Manufacturers Institute

Opening Statement by Sponsor:

SEN. WALTER McNUTT, SD50, SIDNEY, said this bill was requested by the Montana Equipment Dealers Assn., of which he is a member. He said the bill is to correct an oversight in the code. The bill would regulate the termination, cancellation, and transfer of construction equipment dealership agreements. He said manufacturers are consolidating dealerships and dealer termination is not being done fairly. He said this bill parallels the Montana Code 30-11-8. He said the dealer and manufacturer contracts are "contracts of adhesion," which are on a take it or leave it basis and allow no altering. The contracts, he said, specify the terms of the buy-backs which are done at discount even though the dealer is required to maintain parts before they are allowed to get any new equipment. He said another requirement was for the dealer to purchase special tools from the manufacturer. He said, "I just got two boxes in and they cost me \$12,000."

Proponents' Testimony:

Mr. Zimmer said he employed 39 people in Great Falls and Billings. He continued that he had been in business since 1961 and offered 8 lines of construction equipment. He noted the tremendous amount of consolidation among manufacturers like Case, Holland, and International Harvester. He explained when "A" acquires "B" the acquiring manufacturer gives the line of equipment to their dealer, and this leaves the other dealer without a line of equipment. He said the parts inventory is purchased back at cost less 25% restocking charge plus shipping costs. He said this bill will protect the people of Montana and will not hinder business. He noted the agricultural and auto dealers have had this protection in statute and the equipment dealers would like to have it also.

Mr. Eyne said he was the only construction equipment dealer left in Butte and he had been in business for 20 years. He said with the many dealers who had been bought out or merged he felt fortunate to retain his dealership in place. He said it was his hope it would be there for his daughter to run. He told about one manufacturer which had been bought out by another, yet he had to buy thousands of dollars in parts. He explained these were unique parts and no one else used them. He said dealers should be given 90 days notice of termination and allowed to return their parts at fair market value.

Mr. Burkenpas said he was going through three contract terminations. He said he received a \$5000 buyback on a \$9000 set-up with a \$3500 freight cost. He said he would have been charged a \$35,000 penalty and \$4,000 in freight, if he had not had an agreement. Without the agricultural dealer law, he would not have been covered and he encouraged the committee to support the industry and dealers.

Mr. Torgerson said he had been involved in a buyback before the law was passed and it was "a heavy-handed, one-way street." He said he was there in support of the equipment people.

Mr. Ritter said the company he represented had been in business 17 years and was owned by the Washington Company. He said dealers should be able to expect fairness whether they were large or small. He said dealers should be given notice and 90 days seemed like a good amount of time. He added the bill supports Montana people, jobs and industry.

Mr. Griffin said the courts decide many things in Montana and **SEN. MCNUTT** told of a case where the judge ruled against the Montana dealer. He said this law would shore things up. He presented a compilation of all the states' laws on buybacks.
EXHIBIT (buh54a01)

Mr. Turkowicz said his industry was already included in this law but he welcomed his brothers in equipment.

Opponents' Testimony:

Mr. Johnson said great concern had been expressed today about buy-backs, but this bill does not reference buybacks. He said that is because it is already addressed in 30-11-701. He said he saw no purpose in a new section because it is already covered in the code. **EXHIBIT (buh54a02)** He said his organization had not been contacted during the drafting of the bill. He said if this bill was passed it would affect private contracts.

{Tape : 1; Side : B; Approx. Time Counter : 0}

He presented the committee his written testimony.

EXHIBIT (buh54a03)

Informational Witness:

Peter Ohman, Department of Commerce, said he was available for questions.

Questions from Committee Members and Responses:

REP. BROWN asked **SEN. MCNUTT** about the statement **Mr. Johnson** made that this was already covered in state law. **SEN. MCNUTT** said the judge did not see it the same way **Mr. Johnson** saw it. "The judge said the code did not cover us," he explained, "So we are making it in plain language."

REP. KEANE asked what kind of insurance policy there was on parts returned. **SEN. MCNUTT** said there were thousands of parts, some bought by choice, and some by manufacturer's demands. He said it seemed like they should be able to insure the parts, but there were some, like rubber gaskets, which probably couldn't be insured. For example, the rule is if there are two parts in a package, they can't return one only. He added it was an issue for fairness, not insurance.

REP. BOOKOUT-REINICKE asked if he had diagnostic equipment and got a new one, could the old one be returned. **SEN. MCNUTT** said no, he had a scad of diagnostic tools after being at this business for 30 some years. He said he had wound up with obsolete tools and parts, and that was just the way it was.

REP. LAIBLE asked what the bill does because he didn't see anything about buyback. **SEN. MCNUTT** said it puts in statute that equipment dealers are eligible for Section 7. He said if it is not recognized by the Court, they cannot prevail on Section 7.

REP. GALVIN-HALCRO asked **SEN. MCNUTT** if he wanted to sell or pass on his business, what does the bill do for him or whoever he would pass it on to. **SEN. MCNUTT** said the contract of adhesion determined if the business could be passed on. He said the manufacturer must approve who the business is sold to. This bill would allow him to prevail and get his money back, otherwise he would be subject to their terms. He said with this bill his wife could take over after his death.

REP. BITNEY asked what happened to the inventory when the dealer was terminated or went out. **SEN. MCNUTT** said it goes to the manufacturer if new and unused, if can be returned under the

terms of the contract. **REP. BITNEY** asked about the elective parts the dealer purchased. **SEN. MCNUTT** said a dealer has a trade area and they put parts on the shelf to support the inventory they have sold to customers. **REP. BITNEY** asked how they dealt with obsolete or changed parts. **SEN. MCNUTT** said he is still selling parts for tractors made in the late 1940's, and some combines which are out of existence. **REP. BITNEY** asked how his business has changed with the advent of next day and express delivery. **SEN. MCNUTT** said when the customer comes in, "We had better have the part on our shelf." He remarked that 15 years ago his parts inventory was \$150,000, and now it is \$500,000.

Closing by Sponsor:

SEN. MCNUTT asked the committee to keep in mind that this bill sets straight who is eligible to participate in Section 7, because the judge did not see it that way. He added that receiving \$35,000 for \$150,000 worth of tools and equipment was wrong, and the equipment dealers needed something more fair.

{Tape : 1; Side : B; Approx. Time Counter : 20.9}

HEARING ON SB421

Sponsor: **SEN. FRED THOMAS, SD31, BITTERROOT**

Proponents: Steve Turkowicz, Montana Auto Dealers
Dick Olson, Montana Auto Dealers
Mike Grimes, Grimes Motors
Tom Harrison, Montana Auto Dealers Assn.
Brad Griffin, Montana Equipment Dealers
Russ Ritter, Washington Company
Duane Burkenpas, Gallatin Equipment Company
Derrick Torgenson, Torgenson, Inc.
John Eyne, Pioneer Equipment, Butte
Tom Zimmer, Tri-State Tractor & Equipment, Billings

Opponents: Mona Jamison, General Motors

Opening Statement by Sponsor:

SEN. FRED THOMAS, SD31, BITTERROOT, said the bill is about auto dealer franchise laws. The act requires wholesalers, manufacturers or distributors that terminate, cancel, do not renew, or refuse to continue a dealership contract to reimburse a

retailer for, or repurchase from a retailer signs, special equipment and special tools acquired by the retailer at their recommendation. He said the bill makes the manufacturer who fails to renew a contract, responsible for the parts the dealer was required to purchase. He noted that dealers have seen increasing costs in items they are required to purchase in order to be a dealer. He cited items such as tools, signs and computers. The bill also requires the manufacturer to respond to and approve the purchase of a vehicle in a timely manner. He noted there had been some amendments offered, and some were approved by the Senate and some were not.

Proponents' Testimony:

Mr. Turkowicz said dealers receive a 50 page contract and they can choose to sign it or not. He said there are 38,000 new cars sold in Montana each year for a total of \$1.6 billion. A GM dealer, he said, has to agree to use only GM parts and franchises. He also told the committee that the Montana Auto Dealers Assn. was in its 87th year.

Mr. Olson testified he had seen four Ford dealers close in Eastern Montana. "There are 40 in the state, so this is 10% of them," he said. In the new Ford sign program, every dealer is required to buy a sign which costs \$40,000, he said. The dealers also agree to purchase special tools and equipment, he said.

{Tape : 2; Side : A; Approx. Time Counter : 0}

Mr. Grimes said he had been in business 43 years. He presented written testimony which expressed his concerns. **EXHIBIT (buh54a04)**

Mr. Harrison presented information on suits currently against Chrysler and Ford by dealers across the nation. **EXHIBIT (buh54a05)** He said the Montana law needed to be tweaked to protect the dealers. He told the committee that manufacturers used to want a dealer on every corner, but now they think bigger and further apart is better. They have gone from wanting many dealers to wanting few, he said. They now require the dealers to have 50% customer satisfaction in their market area, he said, but that means that the other half of the dealers will be at the bottom of their area. He asked the committee to excuse what **Mr. Johnson** had said because he was just reading what had been written in Detroit and faxed to him. He said the legislature should stay with the legislation across the country, and pointed out 22 states last year made these same changes to the law. "This is a concern to every state," he said.

{Tape : 2; Side : A; Approx. Time Counter : 10.2}

Mr. Griffin said he supported the provisions.

Mr. Ritter noted that the company he represented had encountered a lot of red tape when trying to put the deal together to buy another equipment business. He said this bill will help with that and will support business and industry in Montana.

Mr. Burkenpas said he had been required to purchase \$25,000 in special equipment, buy expensive signs and lease some others, and invest in \$500,000 in computer equipment since 1987. He noted that when new equipment is shipped, he is required to buy special tools and equipment. He said he has to spend as much for this as a large volume dealer, and these items are not returnable. He said he had \$100,000 worth of computer equipment, he was offered \$16,000. He stated he supported auto dealers in their legislation.

Mr. Torgenson said his sons would like to continue with his business, but the special tools and signs and computers required make it difficult. He said when Case introduces a new tractor, they tell the dealers, "These are the tools you will buy." He said he recently had to pay \$8800 for a laptop loaded with their software which could be bought elsewhere for \$1000. For example, he said, to be a part of the certification program required signage, and the sign would be \$11,000, and had to be bought from Case. He said he had called a local signmaker and was told that, if purchased locally, the same sign would be \$3600.

EXHIBIT (buh54a06)

John Eyne and **Tom Zimmer** also said they supported of the bill.

Opponents' Testimony:

Ms. Jamison noted there were 15-20 proponents who were Montana-based but she was the only opponent witness for the huge car manufacturer, General Motors. She said people think big is bad, but she thought big was good. "GM is a good corporation," she said. She said GM provides a lucrative business for franchise owners, just like MacDonald's, but the product is different. She said the franchise members stand for sales and repair, and most people want to know they can get repair in any city. She said the committee had heard that there are \$1.6 billion in new car sales in Montana, and she added that \$700 billion are sold in America. She said the relationship between a manufacturer and a dealer is like a marriage. She said there are ups and downs, give and take and compromises. She said GM really does love its dealers because it cannot be successful without them. She called the bill a further amendment to contracts,, and noted that contracts cannot

be negotiated one on one. She said leaders negotiate the contracts which apply to all on a national level.

{Tape : 2; Side : B; Approx. Time Counter : 0}

She said she had a few amendments to consider. She asked the committee to consider the business climate these bills create. She said bills like this have a bigger impact than the bills to encourage industry to come, because this bill further encroaches on the manufacturer's ability to do business. She told the committee that she was sure they all wanted the dealers to have computers to diagnose their cars when they took them in. She reminded the committee they were not talking about the sale of the corner drugstore, they were talking about multi-million dollar businesses. She presented amendments. **EXHIBIT (buh54a07)**

Informational Witness:

Brenda Nordlund, Department of Justice, was available for questions.

Questions from Committee Members and Responses:

REP. PRICE asked **Mr. Turkowicz** to express his opinion on the amendments offered by GM. **Mr. Turkowicz** asked the committee to resist them because of the time frames.

REP. GALLIK asked **Mr. Turkowicz** if the signs being discussed had the dealer's name on them. **Mr. Turkowicz** said the dealer signs were usually a separate sign. He said they were talking about the ones dealers were required to buy from the manufacturer. **REP. GALLIK** asked if the contract of adhesion was similar to the contract the dealer had with the customer. **Mr. Harrison** said a standard contract is utilized with the customer and changes can be made on the spot. He noted that there are a number of options out there for the customer and they are not required to buy a particular type of car. He said the manufacturers' contracts are "take it or leave it."

REP. LAIBLE asked about the required tool kits. **Mr. Burkenpas** said the quality of the product has not necessitated repair. He told the committee a pool of the service tools would be more economical to the dealer.

Closing by Sponsor:

Mr. Turkowicz thanked the committee for the hearing in **SEN. MCNUTT's** absence.

{Tape : 2; Side : A; Approx. Time Counter : 0}

HEARING ON SB48

Sponsor: SEN. MIKE SPRAGUE, SD6, BILLINGS

Proponents: Neal Peterson, Department of Revenue
Julie Millam, Montana Christian Coalition
Christy Blazer, Montana & Wine Wholesalers
Mark Staples, Montana Tavern Assn.
David Morrison, Earl's Distributing, Missoula
Brad Griffin, Montana Retail & Restaurant Assns.
Christopher Noose, Montana Youth
Kurt Winegardner, Winegardner Wines
Brian Smith, Montana State Brewers Assn.
Brian Clark, Fun Beverages, Inc.
Patrick Montalban, Liquor Owners Assn.
Art Galloway, Toppers
Sue Zagadors, Miles City
John Sherron, Earl's Distributing, Missoula
Daron Melton, Briggs Distributing, Billings
Dan Devin, Devin Bros. Distributing, Great Falls
Scot Thompson, Thompson Distributors, Butte
Keith Dunn, Bronkens Distributing
Mark Johnston, Thompson Distributing, Butte
Jim MacDonald, Sandy Mac's, Helena
Ardelle Watkins, Gusto Distributing, Great Falls
Don Brocopp, Mountain Distributing, Billings
Dale Markovich, Roach and Smith, Butte
Mike Parker, Pennington's, Great Falls & Havre
Kelly Kulbeck, Cardinal Distributing, Bozeman

Opponents: Timothy Wayne King, self, Billings
Pete Bacheller, self, Billings
Bill Gowen, self, Helena
Mona Jamison, Wine Institute
Lon Mitchell, self
Timothy King, self

Opening Statement by Sponsor:

SEN. MIKE SPRAGUE, SD6, BILLINGS, said he was bringing the bill from the Department of Revenue and he had also been approached by

the liquor industry about the bill. He said this was a pre-introduced bill and it had been around for a while and had been melded into a fair and applicable bill. He said the act clarifies that all alcoholic beverages sold in Montana must be distributed according to code and that out-of-state shippers of alcoholic beverages may not ship directly to residents. The bill also imposes penalties for illegal shipments.

Proponents' Testimony:

Mr. Peterson said out-of-state shipment of alcohol into Montana was difficult to enforce and measure sales, and there was no checking of identification. He presented a chart and information on what the bill did. **EXHIBIT (buh54a08)**

Ms. Millam presented a four minute video and written testimony. **EXHIBIT (buh54a09)** She said under-aged people can access alcohol over the internet. She said it is easy for a savvy student to have liquor delivered to their doorstep. She continued that liquor is available on -line at dozens of sites and youth does not even need a fake ID. She said these shipments cannot be controlled, regulated or tracked, and they disregard state laws.

{Tape : 2; Side : A; Approx. Time Counter : 17.6}

Ms. Blazer said her members deliver alcohol to over 5000 retailers around the state. She referred to interstate shipments of alcohol ordered through the internet as "cyber-booze." She said it is a problem and is still growing. She said SB48 would allow Montana to use enforcement rights given to them by Congress. She noted the 21st amendment controls this commerce clause and an appellate decision had agreed. **EXHIBIT (buh54a10)** **EXHIBIT (buh54a11)** She told the committee, "We are talking about alcohol here, not cheese or sunglasses." She asked the committee to support the bill and not to amend it. "Don't make it a little bit pregnant," she said, "This would be the same as making it a little bit enforceable."

Mr. Staples said under the current laws the alcohol goes to the wholesalers where the tax is collected and then to the distributors who see it is sold to people of the proper age. He said this is not an anti-trade bill, although it does impede age and regulation-free trade.

Mr. Morrison said he had seen a tremendous evolution of business. He said there was a demand for ever-increasing products and he now carried over 2000 different items. "Many customers ask us to find unique products," he said. He added that wineries often to not want to work with the distributors. He said an important part

of their service was to meet demands. He also noted that it was much easier to enforce laws on businesses which were in state.

Mr. Griffin said he supported it because he thought the distributors had an excellent selection now.

Mr. Noose told of friends he knew who were able to acquire alcohol without an ID and inexpensively off the internet. He said they collect the money ahead and plan for parties.

{Tape : 3; Side : B; Approx. Time Counter : 0}

Mr. Winegardner said his shop carries 1500 varieties so choice should not be a problem. He told the committee the reason they should go to the trouble to regulate, and not just ship direct, was because the distributors and retailers follow rules and do it right.

Mr. Smith asked the committee to support the bill because he said it was about equity and regulation.

Mr. Clark said he was a wholesale distributor with 350 accounts, 70 employees, \$2 million in wages, and paid \$500,000 in excise taxes. **EXHIBIT (buh54a12)**

Mr. Montalban said his members supported the bill.

Mr. Galloway submitted a letter in support. **EXHIBIT (buh54a13)**

Others who appeared in support were **Sue Zagadors, John Sherron, Daron Melton, Dan Devine, Scot Thompson, Keith Dunn, Mark Johnston, Jim MacDonald, Ardelle Watkins, Don Brocopp, Dale Markovich, Mike Parker and Kelly Kulback.**

Opponents' Testimony:

Mr. King said this is a compromise bill but not for consumers. He said there are thousands of Montanans who are consumers. He presented written testimony. **EXHIBIT (buh54a14)**

Mr. Bacheller said there should be a balance of public interest with the prevention of minor access to alcohol. He said SB48 is an anti-consumer bill. He said that as a consumer in Montana he is permitted to buy only that "which is chosen for me." He said the current laws do not allow him to buy allocations from small wineries. He said he would be willing to pay an annual license fee to be able to direct ship a limited quantity of wine from certain wineries. He said as a consumer his interests need to be served. He said if the fine wine he wants to be is unavailable,

the dollars will go unspent and there will be no increase in revenue for Montana. He said this is not a quantity issue, but is a quality issue. He proposed a "Cellar License" for the collector. He said this would be revenue positive, as it would be deposited up front each year. He said it could be tracked on a voluntary system, much the same way that taxes are paid on an honor system.

Mr. Gowen said as a collector he was concerned with the fact that if he wanted to dispose of his collection, he would be a felon, under SB48.

Ms. Jamison said her members totally supported taxation of all wine sales, and they were totally against underage drinking. She said she wondered how many young people ordered wine off the internet. She said she thought that was a "boogie man" issue so the committee could walk out and say they had done something wonderful to stop underage drinking.

{Tape : 4; Side : A; Approx. Time Counter : 0}

She added the fiscal note says there will be no lost revenue, however, no one knew how much revenue was being lost. She called the Department of Revenue estimate of \$6.3 million a gross overstatement, and asked what were the assumptions. She noted this sum was not on the fiscal note in the Senate testimony.

EXHIBIT (buh54a15) She presented a written exhibit concerning the degree of penalties and punishment. She questioned how the fourth conviction could be a felony since to have a felony there must be intent. She asked whose intent would it be: the winery, the worker, or the shipper. She called "felony" excessive and out of proportion, unless this was in the days of prohibition. She said the bill should be killed and the committee should address the problem in a logical, informative method. She suggested they create a cutting edge statute during the interim so they could come back with no opponents. She said it may have been a compromise bill, but not between the wineries and the consumers. She concluded it was a bad law and hurt consumers.

Mr. Mitchell submitted a letter of written testimony.

EXHIBIT (buh54a16)

Questions from Committee Members and Responses:

REP. GALLIK asked where the penalty ideas came from. **Mr. Peterson** said the Department of Revenue thought the penalties were too low because to go to California to enforce a \$5000 penalty would cost that much. He said it had been \$25,000 for the first offense, but \$5000 was about as low as they could go. **REP. GALLIK** asked him what he thought of a Cellar License fee. **Mr. Peterson** said he

thought some other states had one. In Montana, he said, they charged a \$25 fee for wineries to ship into Montana.

REP. HIMMELBERGER asked what the state tax was on a case of wine. **Mr. Peterson** said it was 27 cents a liter for wine and \$4.30 a barrel for beer. **REP. HIMMELBERGER** asked if under SB48 a small brewery would be prohibited from sending beer from Billings to Kalispell. **Mr. Peterson** said they could not use a common carrier. **REP. HIMMELBERGER** asked if a distributor was prohibited from selling to the public. **Mr. Peterson** said a wholesaler may not sell to the public, they must sell to a retailer.

CHAIRMAN MCKENNEY asked **Mr. Morrison** if a wine connoisseur went to a retailer and asked for a wine which was not inventoried what would happen. **Mr. Morrison** said they have directories of all the wineries in the United States. He said they could contact them and assist them with the forms and schedule delivery. Then he said he could give the customer a choice of retailers where they could go and buy the product.

Closing by Sponsor:

SEN. SPRAGUE said the alcohol business is not like any other business. There is a world of control and a world of abuses involved in it, he said. He called it the flip side of "supply and demand," because it is "demand and supply." He added, "Everybody wants change, so long as nothing changes."

ADJOURNMENT

Adjournment: 12:00 A.M.

REP. JOE MCKENNEY, Chairman

JANE NOFSINGER, Secretary

JM/JN

EXHIBIT (buh54aad)